

101-23704



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: SoBran, Inc.
File: B-258983
Date: February 27, 1995

Amos L. Otis for the protester,
Robert S. Chichester, Esq., Environmental Protection Agency,
for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Agency reasonably made a determination to exclude the protester's proposal from the competitive range, despite its low price, where the solicitation gave primary weight to technical factors, and the record supports the evaluators' determination that to become acceptable, the proposal would have had to be completely rewritten.
2. Protest of agency's failure to place procurement under the section 8(a) program is untimely where allegation is based on events which took place prior to receipt of proposals, but issue was not raised until more than 3 months after the time set for submission of initial proposals.

DECISION

SoBran, Inc. protests the award of a contract to Labat-Anderson, Incorporated under request for proposals (RFP) No. C400244T1, issued by the Environmental Protection Agency (EPA) for publication distribution services in support of the National Center for Environmental Publications and Information (NCEPI). SoBran asserts that the agency improperly evaluated and eliminated its proposal from the competitive range.

We deny the protest.

NCEPI, located in Cincinnati, Ohio, is a central location for the storage and distribution of EPA publications, forms, and multi-media products;¹ on May 13, 1994, the agency

¹Through interagency agreement, NCEPI also stores and distributes publications of the Equal Employment Opportunity Commission (EEOC).

issued the solicitation for award of a fixed-price contract for operating NCEPI, based on price and other factors. The solicitation stated that technical factors would be more important than price; attachment E to the RFP listed the technical factors as follows:

- "1. Demonstration of Corporate Experience, 30 points, including:
 - (a) demonstrated experience with successful management of contracts of similar scope and complexity, 20 points;
 - (b) demonstrated experience with successful management of contracts in a multiple work request environment, 10 points;
- "2. Offeror's Program Management Plan, 145 points, including:
 - (a) demonstrated adequacy of proposed system to track work and costs in a multiple work request environment, 35 points;
 - (b) demonstrated adequacy of system to manage day to day operations and integrate work at multiple sites, 35 points;
 - (c) demonstrated adequacy of system to recruit, train and deploy required personnel in a reasonable time frame, 25 points;
 - (d) demonstrated adequacy of proposed system to produce and deliver reports on time, 25 points; and
 - (e) demonstrated adequacy of the mobilization plan to ensure the contract is fully staffed and operational within 5 working days after award, 25 points;
- "3. Demonstrated Qualifications of Key Personnel, 45 points, including:
 - (a) demonstrated ability to manage a contract operation similar in scope and complexity, 25 points;

(b) demonstrated ability to operate, maintain, and schedule use of high tech packaging, labeling, and mailing equipment similar to the government-furnished property (GFP) under the contract, 10 points; and

(c) demonstrated ability to perform the required mail management functions, 10 points."

Attachment F to the solicitation contained the instructions for preparation of technical proposals. For the evaluation of corporate experience, the instructions advised offerors to provide a clear explanation of how that experience related to the successful performance of the NCEPI statement of work--specifically, a narrative (rather than a list of previous contracts performed) discussion of experience similar in scope and complexity, particularly experience in a multiple work request environment. For the program management plan, offerors were to provide an "indepth" plan, with specific details relating to the management of multiple work requests and day-to-day operations, lines of authority and quality control procedures, and procedures for recruiting and training. Regarding key personnel, the agency instructed offerors to provide a detailed discussion of the individual's qualifications and how they qualified the individual to perform the key position for which they were proposed.

The agency received six proposals on July 13 and referred them to its technical evaluation panel (TEP); the agency selected three of the six offers for inclusion in the competitive range. The agency notified SoBran by letter dated August 15 that its proposal was excluded from the competitive range; at SoBran's request, the agency provided the protester a debriefing, which was held on October 5. This protest followed.

SoBran contends that the evaluation was unreasonable; that its proposal met or surpassed solicitation requirements; and that acceptance of its proposal would present significant benefits to the agency and save money. SoBran argues that the agency unfairly rated its proposal as unacceptable because the protester had followed the solicitation instructions to be "concise."

In reviewing protests against an agency's technical evaluation and decision to eliminate a proposal from consideration for award, we review the record to determine whether the agency's judgments were reasonable and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or

regulations. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. For the reasons set forth below, we find that the agency's technical evaluation in this case was reasonable and consistent with the evaluation criteria, and we conclude that the agency's determination to eliminate the protester's proposal from further consideration was reasonable.

CORPORATE EXPERIENCE

The record shows that SoBran received 8 of 30 points for corporate experience. The evaluators essentially concluded that SoBran had failed to demonstrate experience in managing contracts of similar scope which would allow it to successfully manage the NCEPI contract. SoBran cited its experience on a publications distribution contract at Wright-Patterson Air Force Base (WPAFB); the evaluators, however, found nothing in the proposal to show that the WPAFB contract had the complexity and scope of the NCEPI effort. SoBran disagrees, arguing that a knowledgeable evaluator should have recognized from the proposal's description that the WPAFB contract involved a multiple work environment. We find the evaluation of corporate experience both reasonable and consistent with the solicitation.

SoBran devoted five pages of its proposal to a description of its corporate experience, two pages of which were organizational charts. There is no mention of the processing of work requests under the WPAFB contract, other than telephone calls, which SoBran estimates at more than 100 per day; the NCEPI contract, by contrast, involves telephone requests, letters, telefacsimiles, walk-ins, telecommunication devices for the deaf (TDD), preprinted order forms, EPA program requests, and NCEPI packing slips, including 14,000 telephone calls a month just for the EEOC publications. The evaluators found, and our review confirms, that the proposal had no discussion of experience in managing a high volume of telephone ordering requests, customer service, and distribution services; did not describe in detail the proposed system for managing a multiple work request environment; and did not define tracking in the multiple work request environment or include information on how SoBran had actually managed such activities under its prior contract.

As noted above, SoBran argues that the evaluators should have realized that the WPAFB contract involved work of similar scope and type and that it was constrained by the solicitation direction to be "concise." An offeror has the responsibility to submit an adequately written proposal and runs the risk of having its proposal being downgraded if it fails to do so. J-E-T-S, Inc., B-255770, Mar. 31, 1994, 94-1 CPD ¶ 237.

PROGRAM MANAGEMENT PLAN

The TEP assigned SoBran's proposal 36 of the 145 points available for the program management plan, the single most important evaluation factor and worth nearly two-thirds of the 220 points available overall. Initially, the evaluators found that SoBran had failed to submit a plan as such, and instead had used a different format--a list of position descriptions. The evaluators found the information submitted "thorough" as far as it went, but concluded that the proposal lacked details on implementation and provided nothing by which the TEP could judge whether the plan would work in a multiple work request environment. The proposal addressed the initial hiring phase, but the evaluators found that it did not address peak work load periods or training; the protester appeared to understand the reporting requirements, but the TEP could find nothing about the proposed system to generate reports, other than a repetition of the solicitation requirements. The evaluators found that the mobilization plan lacked detail and contained discrepancies in the time frames referenced (some of the training periods mentioned were considerably in excess of the required mobilization time).

Again, contrary to SoBran's assertions that its proposal thoroughly discussed these issues, the record shows that the proposal was extremely brief in addressing these issues and involved considerable reliance upon charts rather than narrative detail or citation of actual work experience. Of particular concern, the agency notes, was the failure to discuss training on the GFP, which is highly complex and more demanding than the equipment experience cited in SoBran's proposal. This concern and the evaluation of SoBran's management plan appear reasonable and consistent with the solicitation.

KEY PERSONNEL

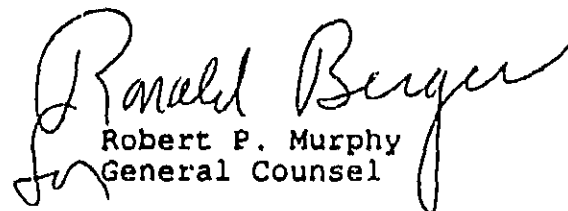
SoBran received 9 of the 45 points available for the qualifications of its key personnel. In short, the evaluators found that the program manager had no experience in handling an operation of similar size and complexity. SoBran argues that nothing in the solicitation required that its key personnel have prior experience in supervision; however, it is reasonable to find unacceptable a proposal to use an individual with no supervisory experience as program manager where, as here, offerors were required to discuss how prior experience qualified key personnel to perform the positions for which they were proposed. Further, the proposal addressed only a limited number of types of equipment, with no discussion of how SoBran would train personnel to operate the specialized mailing and labeling equipment in a 5-day mobilization period; the evaluators

found no indication that SoBran's personnel were familiar with international mailings or the way to determine the most economical way of shipping packages. Again, we find the agency's concerns reasonable and consistent with the solicitation evaluation criteria.

SoBran contends that its substantially lower price should have placed it in line for award, regardless of the technical merits of its proposal. In a negotiated procurement such as this one, however, there is no requirement that award be made on the basis of lowest price. Central Texas College, 71 Comp. Gen. 164 (1992), 92-1 CPD ¶ 121, and here the RFP provided that technical concerns would also be considered and in fact were more important than price. Since the agency's evaluators concluded that every part of SoBran's proposal would have to be substantially revised to be made acceptable and that the proposal therefore was unacceptable, SoBran could not be considered in line for award notwithstanding its low price.

SoBran also protests EPA's decision not to place the procurement under the Small Business Administration's (SBA) section 8(a) program.² To the extent this is an issue we would review, see 4 C.F.R. § 21.3(m)(4) (1994), the issue is untimely. SoBran's allegations in this regard all refer to events that took place prior to the receipt of initial proposals, and since it was clear from the solicitation that it was not an 8(a) procurement, SoBran was on notice of this basis for protest, and should have raised any challenge in this regard, before the time for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1); Environmental Safety Consultants, Inc., B-241390, Oct. 25, 1990, 90-2 CPD ¶ 333.

The protest is denied.


Robert P. Murphy
General Counsel

²Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. V 1993), authorizes the SBA to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns.